

Serial No.: 09/737,185
Amndmt. dated July 15, 2003
Reply to Office Action of January 16, 2003

REMARKS/ARGUMENTS

During a telephone conversation with Howard A. MacCord on 01/08/03, a provisional election was made to prosecute the invention of Group I, claims 1-21 and 27-37. Such election is hereby affirmed without traverse.

The status of claims 27-31 is not clear from the office action. No basis is offered for the apparent rejection of such claims. If they were meant to be allowed, an indication of same would be appreciated.

Claims 1, 6, 7, 9, 10, 14, 15, 18, 19, and 21 stand rejected under 35 U.S.C. 102(b) as being anticipated by Berney (US 5,777,303). Claim 2 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Berney in view of disclosure of RD 421048 A. Claims 3, 4, 11, and 12 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Berney in view of Stevens et al. (EP 1,004,359 A2). Claims 5 and 13 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Berney in view of Stevens et al. and further in view of Leuenberger (US 5,314,421). Claim 8 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Berney in view of RD 421048 A and Leuenberger. Claims 16 and 20 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Berney in view of disclosure of Fukuzaki (US 5,948,103). Claims 17 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Berney in view of RD 421048 A, Stevens, Leuenberger, Fukuzaki, and Coli et al. (US 6,018,713).

The applicant's invention provides a diagnostic specimen system comprising a biomedical specimen collection vessel and a tamper-indicating, wireless electronic memory tag attached to the vessel for non-contact storage and retrieval of information. The electronic memory tag may include a radiofrequency transponder. The diagnostic specimen system may further include data stored on the electronic memory tag including an identification code for the container, the identity of the container and product information about the container, identifying information about a specimen contained in the vessel and about the specimen

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donor, and definition of the analytical tests to be performed on the specimen in the vessel. The system may also have a label imprinted with a container-identifying bar code. The tamper-indicating feature indicates if someone tries to remove the label.

In the primary reference, Berney, the electronic labels for the test tube only remain on the tubes during the time of analysis (see column 1, lines 28-36), so they are not tamper-indicating. Also, within the laboratory environment of the Berney test tubes, sample security is not an issue, so there would be no motivation to make the tags tamper evident. The other references do not fill in the gap.

The claims are allowable because set forth an invention that is neither anticipated by the prior art nor rendered unobvious. None of the above-identified references teaches the combination as set forth in independent claims 1, 8, 9, 17, 18, and 19 of the “wireless electronic memory tag” being “tamper-indicating.” Claims 2-7, 11-16, 20 and 21 depend from the amended independent claims, and therefore now comprise the same “tamper-indicating” wireless electronic memory tag.

Support for the tamper indicating recitation is found in U.S. Patent Nos. 5,135,313 to Bowman at col. 5, lines 55-63, incorporated into the specification by reference at page 2, line 18 and elsewhere in the specification.

The Office Action rejected Claims 1-21 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the examiner states that it is unclear whether the “container” and “vessel” are separate entities, or are the same. The preamble of Claims 1-21 has been amended to avoid such confusion.

The Office Action rejected Claim 4 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 4 has been amended to clarify that the bar code identifies the container.

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The Office Action rejected Claims 5 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. Claim 5 has been amended to overcome such rejection. The "supplier of the container" is not limited, however, to a manufacturer of the container, although the supplier may be the manufacturer. Product information may include a product code, but product information includes any information relating to the container.

The Office Action had rejected Claims 1-21 and 32-37 under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. Independent claims 1, 8, 9, and 17 have been amended to include the structural cooperative relationship between the electronic memory tag and the vessel. Likewise, independent claims 18, 19, and 32 have been amended to include the structural cooperative relationship between the electronic memory tag and the container.

The Applicant submits that by this amendment he has placed the case in condition for immediate allowance and such action is respectfully requested. However, if any issue remains unresolved, Applicant's attorney would welcome the opportunity for a telephone interview to expedite allowance and issue.

Respectfully submitted,



Howard A. MacCord, Jr.
Registration No. 28,639
MacCord Mason PLLC
P. O. Box 2974
Greensboro, NC 27402
(336) 273-4422

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